IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1787 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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ISHAQKHAN GULABKHAN PATHAN

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 1787 of 2001

MR BM MANGUKIYA for Petitioner No. 1-7

MR DAGLI, Ld. AGP for Respondent No. 1

MR BC DAVE for Respondent No. 2

MR PF ADHVARYU for Respondent No. 3-4

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 29/04/2002

ORAL JUDGEMENT

Rule. Mr.Dagli, learned AGP waives service of rule on behalf of respondent No.1, State of Gujarat;

Mr.B.C. Dave, learned Counsel waives service of rule on behalf of respondent No.2, Lunawala Municipality and Mr.P.F.Adhvaryu, learned Counsel waives service of rule on behalf of respondents No.3 and 4.

2. In this petition under Article 226 of the Constitution the petitioners have challenged the notice dated 11th September, 2000 (Annexure "K") issued by the Lunawala Municipality, respondent No.2 herein under Section 185 of the Gujarat Municipalities Act, 1963 (hereinafter referred to as "Act").

3. By the impugned notice, the Municipality has called upon the petitioners to remove the compound wall put up by the petitioners without the permission of the Municipality and more particularly on the ground that the compound wall has been put up on a public street and, therefore, the encroachment is required to be removed. It is the case of the petitioners that the land in question was granted to the petitioners by the then Lunawala State as per the documents produced at Annexure "A" to "C" to the petition. Based on those documents, the land in question was allotted to the petitioners way back in 1944 and that in the past the petitioners had disputed the map prepared by the City Survey Superintendent by filing an appeal to the Deputy Collector. The Deputy Collector allowed that appeal being CTS Appeal No.20 of 1988 by his order dated 7-6-1989 (Annexure "E"). According to the petitioners, the Deputy Collector had instructed the City Survey Superintendent to show the land in question as the land belonging to the petitioners. It is further submitted that the present dispute is raised by and at the instance of respondents No.3 and 4, who are the owners of the land bearing Survey No.2227, with the oblique motive of taking over the land in question in future by the strategy of first getting it declared as a part of a public street and then applying for allotment of the same as an adjoining land being a small uneven strip of land, as nobody would be using it as a road.

4. In response to the notice, affidavit-in-reply dated 14th December, 2001 has been filed on behalf of the Collector and another affidavit-in-reply dated 5th September, 2001 has been filed by the Chief Officer of the Lunawala Municipality.

5. The case of the Collector is that the document card of the City Survey No.2228 is prepared in the year 1964 and since the year 1964 till date the general public has the right to use this road. He has further submitted

that since the dispute between the petitioner and respondents No.3 and 4 is in respect of the same land, which is the subject matter of Regular Civil Suit No.71 of 2001, the disputed question of fact raised herein may not be entertained. Similarly, it is the case of the Municipality in the aforesaid reply that the construction is put up unauthorisedly on the land which is used as a public street. It is further clarified by the Chief Officer of Municipality that the Municipality has not called upon the petitioner to remove the construction on the land bearing Survey No.2228, but the construction required to be removed is that of the compound wall on the land between Survey No.2228 and No.2227, which has been unauthorisedly put up by the petitioner without the permission of the Municipality.

6. Having heard the learned Counsel for the parties and having perused the map (page 33 of the paper book) prepared by the City Survey Superintendent and also the map prepared by the Maintenance Surveyor, Lunawala and authendicated by the Chief Officer of the Lunawala Municipality, it appears that the map shows that the land in question is a public street. It is not very clear as to what is the exact effect of the order dated 7-6-1989 passed by the Deputy Collector, which is at Annexure "E" to the petition. It appears that the petitioners have not taken any steps to get the order dated 7-6-1989 implemented so far, but the petitioners assert their title to the entire land in question on the basis of the documents said to have been executed by the Lunawala State.

7. Ordinarily this Court would not have entertained the dispute raised by the petitioners in this petition under Article 226 of the Constitution, but in view of the Dy. Collector's order dt. 7-6-1989 (Annex E) and the allegations being made against respondents No.3 and 4 (on which the Court expresses no opinion), it would be just and proper to dispose of the petition by passing the following order:-

(I) (i) the petitioners may move the Deputy Collector and the City Survey Superintendent for implementation of the Deputy Collector's order dated 7-6-1989 (Annexure "E") passed in CTS Appeal No.20/1988.

(ii) If the petitioners or their learned Advocate make such an application by 15th May, 2002, the Deputy Collector and the

City Survey Superintendent, Lunawala shall consider and decide the same by 30-6-2002.

(iii) While doing so, the authorities shall also consider objections, if any, of the Lunawala Municipality and respondents No.3 and 4 herein i.e. Ishaq Abdul Raub Mavli, Kasba Mohalla, Lunawala and Rukaiabibi, Wife of Ishaq Abdul Raub Mavli, Kasba Mohalla, Lunawala respectively.

(II) After the aforesaid authorities decide the above issue, depending on the decision in such proceedings, the Lunawala Municipality will be at liberty to take further action in respect of the land in question. In case the Deputy Collector and the City Survey Superintendent come to the conclusion that the land in question or a part thereof is a part of the public street, then Lunawala Municipality shall be at liberty to remove the compound wall, which is put up on such land as may be declared by the Deputy Collector and the City Survey Superintendent as a public street or a part of a public street.

8. The petition stands disposed of in terms of the above directions. No order as to costs. Rule is discharged.

29-4-2002 (M.S. Shah, J.)

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